

ANALYSIS OF ORIGINAL BILL

Author: R. Wright Analyst: Gloria McConnell Bill Number: AB 2004

Related Bills: See Legislative History Telephone: 845-4336 Introduced Date: 02/18/98

Attorney: Brian Putler

Sponsor:

SUBJECT: FTB Collection of Student Aid Commission Outstanding Accounts
Receivable/Additional Notice to Debtor/Limits FTB Collection Remedies

SUMMARY

Under this bill, before an outstanding student loan could be referred to Franchise Tax Board (FTB) for collection the Student Aid Commission (or auxiliary organization) would have to provide additional and specific opportunities for administrative hearings for the debtor, notices of a specific nature be provided the debtor at the debtor's current address, and in the case of a debtor who was involuntarily separated from employment, wait until the debtor has been continuously reemployed in the 12 months preceding referral to FTB. Additionally, the commission would be liable to the debtor for actual damages, statutory damages, attorney fees and costs if the commission refers an outstanding debt to FTB without satisfying all notice and hearing requirements.

Additionally, under this bill:

- referral of outstanding student loans to FTB would be delayed by a minimum of 60 days;
- FTB would be required to send its notice to the debtor's current address and provide at a minimum 60 days for the debtor to make payment, FTB would be restricted in the information sources it could use to collect the debt;
- FTB would be restricted to only levying on the earnings of the debtors in collecting these debts; and
- FTB would be required to adopt regulations to implement the provisions of this bill.

EFFECTIVE DATE

This bill would be effective and operative on January 1, 1999.

LEGISLATIVE HISTORY

AB 255 (Stats. 96, Ch. 1001).

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO ___

GOVERNOR'S OFFICE USE

Position Approved ___
Position Disapproved ___
Position Noted ___

Department Director Date

Agency Secretary Date

By: Date

PROGRAM HISTORY/BACKGROUND

Beginning January 1, 1997, through December 31, 2001, AB 255 requires the Student Aid Commission (commission) to contract with FTB to collect all or part of its outstanding accounts receivable (student loan delinquencies) as though they were delinquent personal income tax (PIT) liabilities, which includes the utilization of administrative garnishment. In addition to using PIT information, FTB was authorized to use any information, sources, and enforcement remedy and capabilities available to the commission. However, before an account can be referred to FTB, the following conditions must be satisfied:

1. The amount must be due and payable,
2. Notice of the amount due and payable must have been sent to the last known address maintained by the commission,
3. In the case of disputes of the amount of a debt or the terms of the repayment schedule by the debtor, the debtor must have been provided an opportunity for an administrative hearing. Moreover, the debtor must not be a party to a judicial proceeding pending with respect to that debt, and
4. The account must have first been referred to a private collection agency for at least nine months, and the private collection agency was unable to collect the account.

The commission began referring accounts to FTB during July 1997. For the period beginning July 1, 1997 through December 31, 1997, FTB had approximately 150,000 accounts in its inventory and collected approximately \$4.4 million. The following reflects FTB's collection activities for that period:

FTB activity	# sent	# attached	payments received
Demands for payments	88,141	5,630	\$2,131,059 ¹
Bank levies	2,311	625	800,321
Wage levies	52,582	23,381	1,458,203

ADDITIONAL COMMENT

Earlier this year, FTB staff, at the request of the commission's staff and the author's consultant, attended a meeting to provide technical assistance as to FTB's student loan collection program. Discussion at the meeting, which was with representatives of lower-income individuals with delinquent student loans, pertained to the majority of the subject matter in this bill. The commission's staff indicated that they ultimately were responsible for collection of student loans and because FTB was working under the commission's guidelines, the commission's staff would work with FTB staff and the representative of the students to resolve these matters administratively through a working group. The author's consultant indicated that a bill would be introduced in the meantime pending resolution of the matter by the working group.

¹ This number includes approximately \$300,000 that was sent directly to the commission as a result of FTB's activities and presumes that the payment was not the result of a bank or wage levy.

SPECIFIC FINDINGS

To collect a delinquent student loan, **currently**, federal and California law prescribes that certain activities, including those described above, must have occurred and due process requirements must have been satisfied. Additionally, the commission may prescribe guidelines relative to the collection of delinquent student loans. One such federal requirement is that a debtor who is involuntarily separated from employment must be reemployed continuously for 12 months before administrative garnishment may be initiated.

Under this bill, additional requirements must be met, including a specific notice and opportunity for hearing at least 60 days prior to referral to FTB. One such hearing allows the debtors to object to referral of their account to FTB for collection. Additionally, the bill expressly precludes **referral** to FTB if a debtor who was involuntarily separated from employment has not been reemployed continuously for 12 months. For each account referred to FTB, the commission must sign a statement under penalty of perjury that all requirements for referral are satisfied. If the commission makes a referral without satisfying the requirements, the commission would be liable for damages, statutory damages up to \$1,000, attorney fees and costs.

Currently, once FTB receives an account from the commission it sends a demand for payment to the address of record or last known address and instructs the debtor that payment must be made within 10 days to prevent collection actions by FTB. Under current practice, to make allowances for the debtor that may make payment on the 10th day, FTB actually allows at least 30 days before the next collection action may be taken. If mail is or has been returned by the post office, and the FTB's automated search locates an employer or bank match for the debtor, the FTB issues an order to withhold to the employer or bank with instructions that the employee or customer be provide specific notice. The debtor has at a minimum 10 days to respond to FTB or the commission before withholding will commence.

Under this bill, once FTB receives the account from the commission the FTB must allow the debtor, at a minimum, 60 days to make payment to FTB or enter into a reasonable and affordable installment agreement, as defined, by the commission. The notice to the debtor would be required to be mailed to the current address of the debtor.

Under current law, in addition to PIT information, information sources and enforcement remedies, FTB is authorized to use information, information sources and enforcement remedies and capabilities available to the commission to collect these student loan delinquencies.

Under this bill, FTB could not use the commission's information, information sources and enforcement remedies and capabilities to collect these student loan delinquencies.

Under current law and practice, FTB uses an automated tax collection system to send notices of student loan delinquencies, garnish wages and attach bank accounts. FTB uses tax information returns filed by banks and other third

parties, Employment Development Department employer/employee information and DMV records. In addition, FTB can administratively attach any cash equivalents of the taxpayer, issue warrants to seize and sell the taxpayer's assets and file liens against personal or real property interests, with exceptions of certain items enumerated in the Code of Civil Procedure.

Under this bill, FTB's sole collection remedy would be limited to garnishing wages.

Implementation Considerations

This bill would significantly affect the effectiveness and efficiency of FTB's student loan collection program, especially if it is the intent that all of the student loan delinquencies in FTB's inventory prior to the effective date of this bill be returned to the commission to satisfy the requirements in this bill. In addition, FTB staff has identified the following implementation considerations:

- **Requires notice based on debtor's current address**-- Frequently the current address of a debtor is not known. FTB has available the records of last filed tax returns, vehicle registration and driver's licenses. FTB has no control whether an individual updates their address records or provides the post office with a change of address. If the current address is not available, it is unclear whether further collection action could be taken.
- **Delays collection activity**-- This bill delays collection activities on all cases by a minimum of 2 months. Historically, collection becomes increasingly difficult as the debt ages.
- **Limits collection activities**-- If wage garnishments were the only collection action that FTB could take, collections would be significantly impacted. While the majority of FTB's automated collection activities involve the issuance of wage levies, for each bank account that was attached during 1997, the average collection was approximately \$1,300. The development of the student loan collection program is in its infancy, with staff focusing on implementing the transmittal of the accounts, coordination between FTB and the commission, recordkeeping and the automated process. FTB has yet had an opportunity to develop other collection possibilities.
- **Restricts collection avenues and sharing of information**-- FTB currently uses the commission's information to resolve issues raised by the debtor. Approximately 50% of the calls FTB receives require that the commission's system be accessed. Additionally, FTB could not get updated addresses (borrowers have an obligation to notify lenders of changes of address) and case information from the commission. Reducing the amount of information available to FTB will increase debtor frustration in account resolution. Furthermore, for California's student loan collection program to reach its potential, any reasonable information and collection avenues available to the commission should be used to contribute to this goal. The commission pays for FTB's student loan collection program, and collections made by FTB are an enhancement to the commission's collection

program. Restricting FTB's use of the commission's student loan collection information, information sources, remedies and capabilities may reduce FTB's effectiveness as a collection resource.

In addition, to require the commission to sign a statement under penalty of perjury for each account referred to FTB and provide for a penalty for failure to comply with all requirements, which would include the signing the statement, indicates that the statement may need to be maintained and stored as a record. Considering that currently FTB is receiving 5,000 referrals per month electronically, even if the number of accounts were to drop dramatically, this could be a burdensome process for FTB if it is expected that FTB would have to verify that a written statement is in fact received for each account referred. It is unclear whether the commission or FTB would be responsible for maintenance and storage of the statements, whether the statement would have to be maintained so that a particular statement could be retrieved, and how long the statements would have to be maintained. If the commission was able to satisfy this requirement electronically and FTB was required to maintain the records, it is unknown at this time what impact the record exchange, maintenance and storage would have on FTB's programs or operations.

Additionally, this bill implements due process protections beyond those already provided under both federal and California laws prior to referring a debt to FTB and also substantially restricts FTB's collection activities following referral. If the due process provisions are implemented, it is unclear why restrictions should then be placed on the collection of otherwise valid debts.

FISCAL IMPACT

Departmental Costs

FTB's costs are based on FTB's collections and are paid by the commission. FTB's costs cannot exceed 15% of its collections and would be affected by any decrease in the number of accounts that the commission has projected would be referred to FTB in future years. Until the provisions of the bill are clarified, the impact on the department's costs cannot be determined.

Collection Estimate

If the intent of this bill, as previously discussed, is for all student loan delinquencies in FTB's inventory prior to the effective date of this bill to be returned to the commission, FTB's student loan collection program would be dramatically affected. This bill would cause collection of student loans by FTB to be significantly disrupted to the extent that monthly referrals and collection activities would be delayed. An estimate as to the collection impact cannot be determined until provisions of the bill are clarified.

BOARD POSITION

Pending.